



**Eitan D. Blanc**  
Member PA & NJ BAR  
Direct Dial-267-765-7341  
Fax – 267-765-9689  
edblanc@zarwin.com

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**VIA ECF**

Hon. James B. Clark, U.S.M.J.  
United States District Court  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07101

**Re: DVL, Inc. and DVL Kearny Holdings, LLC v. Congoleum Corporation and  
Bath Iron Works Corporation; U.S. District Court, District of New Jersey,  
Civil Action No. 2:17-cv-04261**

Dear Judge Clark:

As Your Honor knows, I represent the Plaintiffs in the above-captioned litigation. I write this letter to request an adjournment of the current expert discovery schedule in light of the Chapter 11 bankruptcy petition filed by Congoleum Corporation (“Congoleum”) last week.

As the Court no doubt is aware, Congoleum filed a Notice of Suggestion of Bankruptcy and Automatic Stay Proceedings with this Court last Thursday, July 16, 2020 (ECF 181). Congoleum’s Chapter 11 bankruptcy filing came only a week before expert depositions were set to begin. As a result of the automatic stay imposed by the Bankruptcy Code, bankruptcy counsel for Congoleum advised that Congoleum does not intend to participate in the expert depositions, which had been calendared to take place almost every week between now and the beginning of September in accordance with the Court’s most recent Scheduling Order (ECF No. 180). Congoleum further maintains that any claims against it, by any party, must be adjudicated solely through the bankruptcy claims process. While the automatic stay applies to Congoleum, it does not on its face prohibit the continuation of this case against Defendant, Bath Iron Works Corporation (“BIW”) alone, although doing so would result in undue duplication and a waste of resources.

Plaintiffs intend to file a motion in the Bankruptcy Court seeking relief from the stay to allow this case to proceed through its final stages simultaneously against both BIW and Congoleum. If the Bankruptcy Court grants Plaintiffs’ motion, Plaintiffs (and BIW) will be able to liquidate their claims against Congoleum in a timely and efficient manner before the District



Court, which is familiar with this case after presiding over the matter for the last three years; the matter would then proceed to the Bankruptcy Court for any enforcement proceedings against Congoleum. To avoid the duplicative proceedings that necessarily would result from separating Plaintiffs' claims against BIW from its claims against Congoleum, including the possibility that expert depositions would have to be conducted multiple times, Plaintiffs believe it makes sense that all expert depositions be held in abeyance until Plaintiffs' stay relief motion may be heard. If relief from the stay is granted, the expert depositions can promptly be rescheduled with the participation of all parties, and any potential duplication and waste of party and judicial resources will be avoided. A brief pause in this litigation while awaiting the Bankruptcy Court's decision is, respectfully, a small price to pay to avoid such wasteful duplication.

For the above reasons, Plaintiffs respectfully request that the Court enter the proposed Order submitted herewith suspending the expert discovery schedule in this matter until after Plaintiffs' relief from stay motion is ruled upon.

We have conferred with counsel for BIW about this letter. BIW agrees with the relief sought in this request but takes no position at this time on the merits of DVL's motion to lift stay (which BIW has not yet seen) or the other positions asserted by DVL in this letter.

If the Court would like to conference this matter with counsel, we of course will make ourselves available at Your Honor's convenience.

Respectfully,

/s/ Eitan D. Blanc

Eitan D. Blanc

Anthony R. Twardowski

Cc: All counsel of record (Via ECF)  
Warren A. Usatine, Esquire (Via E-Mail)